

EXHIBIT MM

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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VIDEOTAPED DEPOSITION OF

FATEN SABRY, PH. D.

Thursday, June 20, 2019

New York, New York

24 Reported By:

25 LINDA J. GREENSTEIN

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1 MR. STEWART: Geoff Stewart and
2 David Fox from Jones Day for the Witness
3 and for the Movants in this matter.

4 THE VIDEOGRAPHER: We also have
5 participants on the phone.

6 Could we have you introduce
7 yourselves.

8 MR. GREEN: Jesse Green from
9 White & Case on behalf of the Puerto Rico
10 funds.

11 MS. SOMBUMTHAM: Natalie
12 Sombumtham from FTI Consulting for the
13 Retiree Committee.

14 THE VIDEOGRAPHER: Will the
15 court reporter please swear in the
16 witness.

17 FATEN SABRY, PH.D.,
18 having been first duly sworn, was examined
19 and testified as follows:

20 EXAMINATION BY

21 MR. DALSEN:

22 Q. Good morning.

23 Could you please state your full
24 name for the record.

25 A. Good morning.

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1 identify that you have been asked by
2 counsel to evaluate whether there has been
3 a diminution in value of the collateral of
4 the ERS bonds after the imposition of the
5 PROMESA stay; is that right?

6 A. Right.

7 Q. And your report does not opine
8 on whether there has been any diminution in
9 value of the collateral of the ERS bonds
10 after the imposition of the PROMESA stay?

11 A. The questions that I was asked
12 to address do inform the assessment of
13 whether there is a diminution in value of
14 the collateral --

15 Q. But your report -- sorry. You
16 can complete your answer.

17 A. The third sentence in the
18 Exhibit 4 that you handed me explain that.

19 It says: "More specifically,
20 I've been asked to evaluate the financial
21 position of ERS," and goes through the list
22 of what's in paragraph 27.

23 Q. Right. But for Exhibit 4, you
24 don't recall having prepared Exhibit 4; is
25 that right?

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1 A. I don't recall.

2 Q. And it is the case that your
3 report, Exhibit 1 to today's deposition,
4 does not opine on whether there has been
5 diminution in value of the collateral of
6 ERS bonds; is that correct?

7 MR. STEWART: Objection.

8 A. As I said a minute ago, I
9 believe that the questions that I answered
10 in my report, and specifically in paragraph
11 28, address and inform the question as to
12 whether there has been a diminution in the
13 value of the collateral.

14 Q. And regardless of whether the
15 questions that you have answered in your
16 report address and inform the question of
17 whether there's been a diminution in value
18 of collateral, your report does not opine
19 one way or the other whether there, in
20 fact, has been diminution in value of
21 collateral; is that right?

22 MR. STEWART: Objection.

23 A. Would you please repeat the
24 question?

25 MR. DALSEN: Can you repeat

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1 that.

2 (Requested portion of record
3 read.)

4 MR. STEWART: Same objection.

5 A. I disagree with -- with that and
6 I stand with my answer that I said before.

7 Q. Can you point me to any place in
8 your report in Exhibit 1 where you state
9 your opinion as to whether there has been
10 diminution in value of the collateral of
11 ERS bonds?

12 A. My opinions are in -- or my
13 findings are summarized in paragraph 28.

14 Q. And can you point me to anywhere
15 in paragraph 28 where you opine one way or
16 the other whether there has been diminution
17 in value of the collateral of ERS bonds?

18 A. As I stated in my earlier
19 response, my answer to the questions of
20 assessing the valuation -- the financial
21 position of ERS and PayGo system, the
22 assessment of the various risks of
23 repayment of the bonds due to various
24 factors informed the question on the
25 diminution of collateral.

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1 Q. Right. But the answer to my
2 question of whether you can point me to
3 anywhere in paragraph 28 where you opine
4 one way or the other whether there has been
5 diminution in value of the collateral of
6 the ERS bonds, the answer to that question
7 is no, you cannot; correct?

8 MR. STEWART: Objection.

9 A. No, and I do stand by my prior
10 answer.

11 Q. And just to be clear, your
12 answer is no, you cannot point me to a
13 place in paragraph 28 where you opine one
14 way or the other whether there has been
15 diminution in value of the collateral in
16 ERS bonds, and then in addition to that,
17 you stand by your prior answer?

18 MR. STEWART: Objection.

19 That was not her prior answer.

20 MR. DALSEN: Okay.

21 Let me try this again.

22 MR. STEWART: Well, you've asked
23 the question I think five times now. You
24 may not like the answer, but you've got
25 your answer.

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1 BY MR. DALSEN:

2 Q. And putting aside paragraph 28,
3 you cannot point me to anywhere in
4 Exhibit 1, which is your expert report,
5 where you opine one way or the other
6 whether there has been diminution in value
7 of the collateral of ERS bonds; is that
8 correct?

9 A. I disagree. I -- my -- my
10 entire report that -- where I evaluate the
11 financial position of ERS and assess the
12 various risks of repayments due to various
13 conditions address the question of whether
14 there was diminution in value of the
15 collateral.

16 Q. And can you point me to any
17 statement in Exhibit 1 where you say that
18 it is your opinion one way or the other
19 whether there has been diminution in value
20 of collateral of ERS bonds?

21 A. No.

22 MR. DALSEN: Let's take a short
23 break.

24 THE VIDEOGRAPHER: Going off the
25 record.

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1 with paragraph 69, I summarize data on the
2 largest nonpayments of PayGo by
3 municipalities in fiscal year 2018, as well
4 as unpaid PayGo fees by public corporations
5 as well.

6 Q. But none of the paragraphs in
7 Section B starting on page 42 analyzed the
8 cause of the missed payments of PayGo fees;
9 right?

10 A. Yes.

11 Q. Now, when you're talking about
12 missed payments of PayGo fees, I think you
13 just said that what you're referring to --
14 and my question is whether this is correct
15 -- you're referring to municipalities and
16 public corporations that have failed to pay
17 on their PayGo invoices; is that right?

18 A. In this section that that was
19 the focus of the discussion, yes.

20 Q. But when you say -- when you
21 refer to missed payments in paragraph 64,
22 you're not referring to any failure of the
23 Commonwealth to fulfill the guarantee to
24 pay PayGo fees under Act 106; correct?

25 MR. STEWART: Objection.

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1 A. I'm -- what do you mean that the
2 Commonwealth guarantees payment of PayGo
3 fees? It's my understanding that the
4 Commonwealth guarantees payments of pension
5 benefits to retirees. That's the guarantee
6 that I discuss in my report.

7 That's not the same thing as
8 guaranteed the fees.

9 Q. Are you aware of the
10 Commonwealth failing in any respect to
11 fulfill the guarantee identified in Act
12 106?

13 A. No.

14 Q. Dr. Sabry, I'd like to ask you
15 now about Exhibit 2 to the deposition,
16 which is your rebuttal report.

17 And I want to begin by asking
18 you about the summary of your opinions in
19 paragraph 3.

20 So beginning in paragraph 3(a),
21 you say that: "Mr. Malhotra's conclusion,
22 that the net present value of the PayGo
23 projections exceeds the debt obligation,
24 does not necessarily mean that the ERS bond
25 obligations will be repaid."

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1 proposed 10 percent reduction in the
2 pension payments, so that's a risk to
3 repayment of the bonds, if there are
4 additional reductions, for example, in
5 pension payments in the future.

6 Q. So is it fair to say that you're
7 adopting Milliman's analysis and Mr.
8 Malhotra's opinion on the matter that you
9 just discussed?

10 A. No.

11 Q. Do you independently analyze and
12 provide an opinion as to reduction in the
13 projections that Milliman provided in your
14 report?

15 A. I could not do that because I --
16 I have specifically asked for certain
17 production, certain electronic files
18 related to the projections of Milliman, as
19 well as Mr. Malhotra, and I have not
20 received all of the information that I need
21 to -- to independently verify their
22 projections.

23 Q. You also mentioned potential
24 future changes to retirement benefits that
25 could negatively impact PayGo projections.

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1 for in his calculation of NPV, the
2 remaining factors that you discuss in
3 paragraph 3(b) of your report are only
4 describing factors that could affect the
5 NPV of the projections and the servicing of
6 the bonds, not factors that, in fact,
7 affect the NPV and servicing of the bonds;
8 right?

9 A. No, they are factors that could
10 affect the NPV of the projections and Mr.
11 Malhotra did not take them into account.

12 For example, the failure of
13 certain municipalities and public
14 corporations to remit their PayGo invoices
15 in full is -- is a credit risk, is a credit
16 risk that even the Department of Treasury
17 acknowledged in its -- in its documents.

18 Q. And while in your view Mr.
19 Malhotra did not account for those factors
20 that you believe could affect the NPV and
21 servicing of the bonds, in your report,
22 your rebuttal report here, you also do not
23 undertake the analysis that in your view
24 Mr. Malhotra should have undertaken; right?

25 A. That's correct, and -- and I

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1 discussed earlier the -- my request for
2 additional production regarding these --
3 the models underlying the projections.

4 Q. I want to direct you to
5 paragraph 9 of your rebuttal report, which,
6 again, just for the record, is Exhibit 2 to
7 the deposition.

8 Now, the heading above paragraph
9 9 on page 4 of Exhibit 2 says:

10 "The NPV of the PayGo
11 Projections Relative to the Bondholder
12 Claims Does Not Ensure Repayment of the ERS
13 Bonds."

14 Do you see that?

15 A. Yes.

16 Q. What do you mean by "ensure
17 repayment"?

18 A. It means that the comparison
19 that Mr. Malhotra did of the NPV to the
20 debt obligation does not necessarily
21 demonstrate the adequacy of funds to
22 service the ERS bonds.

23 Q. Isn't it always the case that an
24 NPV calculation may 40 years down the road
25 be incorrect?

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1 A. That is part of the problem.
2 Mr. Malhotra in his backup
3 acknowledged that there are various
4 assumptions and inputs that go into the
5 model that could -- that if they were
6 changed they will change the projections in
7 a significant way, but Mr. Malhotra did not
8 present in his report how he accounted for
9 any of these risks or uncertainties.

10 Q. And in your rebuttal report
11 here, you did not perform a calculation of
12 NPV accounting for the various
13 uncertainties and risks that you believe
14 Mr. Malhotra should have accounted for;
15 right?

16 A. Yes, and I also do not have all
17 of the backup files to be able to replicate
18 his work in full.

19 Q. And in your rebuttal report, you
20 do not offer an opinion as to an
21 appropriate discount rate to use in an NPV
22 calculation for the PayGo fees; right?

23 A. Would you please repeat the
24 question?

25 (Requested portion of record

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1 Malhotra used is inappropriate for the
2 purpose that he used it for.

3 Q. And so you have not performed an
4 analysis of the credit risk associated with
5 ERS bonds and compared that to the credit
6 risks associated with GO bonds in your
7 rebuttal report?

8 A. No.

9 Q. I want to direct you to --
10 actually, I think I'm done with that
11 document for now.

12 Dr. Sabry, you understand you
13 may be called for cross-examination in New
14 York City on July 2nd?

15 A. Yes.

16 Q. Where do you intend to be on
17 July 2nd?

18 A. In New York.

19 MR. DALSEN: With that, I'll
20 pass the witness.

21 EXAMINATION BY

22 MR. STEWART:

23 Q. Dr. Sabry, you were asked
24 questions in the course of your deposition
25 about a guarantee coming from the

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1 Commonwealth as a result of the enactment
2 of what's called Act 106 of 2017.

3 What did you understand that
4 guarantee to be a guarantee of?

5 A. I understand that the guarantee
6 is -- is a guarantee from the Commonwealth
7 to make pension payments.

8 Q. Pension payments to whom?

9 A. To retirees and beneficiaries
10 under the ERS system.

11 Q. The ERS system is the defined
12 benefits system we've been talking about?

13 A. That's correct.

14 Q. You understand you were also
15 questioned by Mr. Dalsen about something
16 called PayGo fees?

17 A. Yes.

18 Q. Are PayGo fees the same thing as
19 the payments to retired people in Puerto
20 Rico?

21 A. As I understand it, no.

22 Q. What are PayGo fees?

23 A. As I understand it, PayGo fees
24 are the invoices that are assigned to the
25 obligors of the system, the Commonwealth,

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1 the public corporations and municipalities.

2 Q. So an invoice would go, for
3 example, to the City of Mayaguez, Puerto
4 Rico to pay a PayGo fee?

5 MR. DALSEN: Object to form.

6 A. That's my understanding.

7 Q. And then if the city pays the
8 PayGo fee, what would you call that
9 payment?

10 A. I'd call it a payment of the
11 PayGo invoice.

12 Q. If the City of Mayaguez didn't
13 pay that, what kind of guarantee is there
14 from the Commonwealth for payment of that
15 PayGo invoice?

16 A. As --

17 MR. DALSEN: Object to form.

18 BY MR. STEWART:

19 Q. You may answer.

20 A. As I understand it, the
21 Commonwealth would guarantee the payments,
22 that all -- the benefits, the retirement
23 benefits, but that's not the same thing as
24 the PayGo invoices.

25 Q. You were asked a couple of